

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 05/15/2000	NUMBER 01.06.110
SUBJECT FREEDOM OF INFORMATION ACT - ACCESS TO DEPARTMENT PUBLIC RECORDS		SUPERSEDES 01.06.110 (01/10/00)	
		AUTHORITY MCL 4.359; 15.231 et seq.; 28.730; 423.504; 762.14; 771.14; 780.623; 791.203; 791.229; 791.230a; Administrative Rule 28.5208	
		ACA STANDARDS 3-4013; 3-4020; 3-4095; 1-ABC-1E-07; 1-ABC- 1E-08; 1-ABC-1F-02; 2-CO-1A-26; 2-CO-1E-06; 2-CO-1E-07; 3-ACRS-1E-06; 3-ACRS-1E-07; 3- ACRS-1E-08; 3-ACRS-1F-02	
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POLICY STATEMENT:

All requests for Department documents made pursuant to the Michigan Freedom of Information Act (FOIA) shall be processed within required time limits by designated FOIA coordinators, and non-exempt documents shall be made available to qualified requestors.

RELATED POLICY:

02.01.140 Personnel Office Records

POLICY:

DEFINITIONS

- A. Document - Writings, photographs, photocopies, drawings, video and audio tapes, computer data or documents retained on a computer, microfilm, microfiche and any other means of recording or retaining information, not including computer software.

GENERAL INFORMATION

- B. All documents in the Department's possession are public documents and may be subject to disclosure under the FOIA. This shall include documents in the Department's possession that are created by another agency (e.g., Department of Community Health, Federal Bureau of Prisons, jails) or by an entity under contract with the Department (e.g., Wackenhut Corrections Corporation). However, documents which are possessed only by another agency or an entity under contract with the Department shall not be subject to a FOIA request received by the Department.
- C. FOIA requests shall only be processed when submitted in writing and delivered in person or via mail, facsimile machine or electronic mail. Except as set forth in Paragraph D, any written request for a document shall be considered a FOIA request, regardless of whether the FOIA is mentioned.
- D. The following shall not be considered to be FOIA requests:
1. A request from a governmental agency, including a court, which is entitled by law to receive the information or documents requested (e.g., a request under the Michigan Unemployment Compensation Act or from the Office of the Legislative Corrections Ombudsman, the Family Independence Agency, the Auditor General, or another jurisdiction seeking certification of a prisoner's incarceration with the Department).
 2. A discovery request pertaining to a lawsuit (e.g., Request for Production of Documents). All discovery requests shall be referred to the appropriate litigation coordinator, as set forth in PD 02.01.102 "Litigation - Department and Employee Responsibilities".

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3. A request from the Department of Attorney General for documents that are needed for pending litigation. Such requests shall be referred to the appropriate litigation coordinator.
4. A request from a private or governmental agency for employee personnel information which the employee has authorized to be released (e.g., employment verification to a lending institution or prospective employer). Such requests shall be referred to the appropriate personnel office.
5. A request from an employee to inspect his/her personnel or medical files, or to receive one copy of the documents in those files. Such requests shall be referred to the appropriate personnel office and processed as set forth in PD 02.01.140 "Personnel Office Records".
6. Unless the request specifically mentions the FOIA, a request from a collective bargaining unit, pursuant to its contract, for documents related to a disciplinary matter. Such requests shall be referred to the appropriate personnel office. The appropriate personnel office shall be advised of requests processed under the FOIA.
7. Documents required to be produced by a subpoena or other court order.
8. A request from an educational institution for a transcript of a prisoner's education record.
9. A request to a probation officer from a prisoner's criminal trial or criminal appeal attorney for one copy of his/her client's pre-sentence investigation report.
10. A request from a news media representative, unless the request specifically mentions the FOIA or is for copies of several Department documents. The Public Information and Communications Section of the Executive Bureau shall be consulted on any questions which may arise in processing a request from a news media representative.
11. A request from a law enforcement agency.
12. A request from legislative staff, unless the request specifically mentions the FOIA or is for copies of several Department documents. The Executive Assistant to the Director or designee shall be consulted on any questions which may arise in processing a request from legislative staff.

FOIA COORDINATORS

- E. The FOIA Coordinator for the Department shall be the Administrator of the Office of Audit, Internal Affairs and Litigation. Local FOIA coordinators shall be designated to act on behalf of the Department FOIA Coordinator to accept and process FOIA requests received at the following locations:
 1. The Central Office FOIA Coordinator in the Litigation and FOIA Division, Office of Audit, Internal Affairs and Litigation, is responsible for the following:
 - a. Requests received in Central Office,
 - b. Requests received by the Contract Monitor for the Michigan Youth Correctional Facility (MYC),
 - c. Requests for documents regarding MYC, and
 - d. All requests for documents in prisoner files in storage, except the health record.
 2. At each Correctional Facilities Administration (CFA) institution, as identified by the Warden. A separate coordinator also may be identified for the personnel office, the record office, and for a camp annexed to the institution.
 3. At each Bureau of Health Care Services (BHCS) regional office, as identified by the Regional Health Care Administrator. Other local health care FOIA coordinators may be identified as

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needed.

4. At each Field Operations Administration (FOA) regional or area office, as identified by the appropriate Regional Administrator or Area Manager.
 5. At the Special Alternative Incarceration Program (SAI) facility, as identified by the SAI Administrator.
 6. At each CFA regional office, as identified by the Regional Prison Administrator (RPA).
 7. At Duane Waters Hospital, as identified by the BHCS Administrator or designee, for requests for documents in prisoner health records in storage.
- F. Each local FOIA coordinator shall maintain monthly statistics on the number of FOIA requests processed. The local FOIA coordinator shall forward statistics to the Central Office FOIA Coordinator on a quarterly basis. The Central Office FOIA Coordinator shall compile Central Office and Department-wide statistical reports.
- G. Each local FOIA coordinator shall maintain a copy of all FOIA requests received and all completed Responses to Request for Public Records - FOIA form (CSH-479). These documents shall be retained in accordance with the Department's Retention and Disposal Schedule, but for no less than one year.
- H. Questions regarding FOIA requests shall be directed to the Central Office FOIA Coordinator.

PRISONER REQUESTS

- I. Prisoners shall not be entitled to receive or inspect documents under the FOIA. Requests for documents received from prisoners shall be denied using the Response to Request for Public Records - FOIA form (CSH-479), except as set forth in Paragraphs J through L.
- J. Although prisoners shall not be entitled to receive or inspect documents under the FOIA, they shall continue to receive copies of appropriate forms when they are generated (e.g., major misconduct reports; administrative hearing reports; security classification screens; notices of parole board action; time review and disposition forms). Prisoners also may be provided with a copy of any appropriate document if it is helpful in responding to a grievance or correspondence from a prisoner. However, prisoners are not entitled to review or inspect their files except as set forth in PD 06.05.103 "Parole Eligibility Reports".
- K. Prisoners shall be provided access to documents about their medical care as set forth in OP 01.06.110-A "Prisoner Access to Medical Records". Requests for such information shall be submitted by the prisoner to health care staff of the facility where the prisoner is housed.
- L. Upon request, prisoners shall be provided with a copy of their hearing investigation for any formal hearing, except those documents which have been determined by the hearing officer to be confidential. Such requests shall be made to the hearing investigator at the facility where the hearing occurred.

EMPLOYEE REQUESTS

- M. Department employees are entitled to make requests under the FOIA. However, such requests shall not be made using Department time or resources, including its computers and office supplies. Any known misuse of Department time or resources shall be reported to the employee's supervisor.
- N. Information and documents regarding the filling of Department positions shall be exempt until after the position has been filled. Once it has been filled, only the following information and documents shall be provided:

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1. The summary of the applicant pool, the letter summarizing the position and selection process, and the summary of the top-ranked candidates sent to the Department's Equal Employment Opportunity Office. No exemptions are to be taken, assuming the candidates are identified by number only.
2. The names of all applicants.
3. The resume of the requestor, assuming s/he applied for the position. All other resumes shall be exempted.
4. The names of those applicants interviewed for the position, ensuring they are not presented in the order in which they were ranked.
5. The scores of the top ranked candidate and the requestor, if s/he interviewed for the position. The scores of other candidates and comments of the raters, if any, shall be exempted.
6. The selection plan.
7. The job posting.
8. The job inquiry letter sent to potential candidates for the position, ensuring it does not contain the name and address of a recipient.
9. The Department of Civil Service register which was used, exempting addresses, telephone numbers, and social security numbers.

PROCESSING FOIA REQUESTS

- O. A FOIA request received by an employee shall be referred within one business day to the local FOIA coordinator for the employee's work site. The local FOIA coordinator shall respond to the request within five business days after receipt, using the Response to Request for Public Records - FOIA form (CSH-479). If additional explanation is needed, the response form may be accompanied by a letter from the responder. However, the response form shall be used in all cases. A request received by facsimile or electronic mail shall be considered received on the business day following the date of transmission.
- P. A ten business day extension may be taken by the local FOIA coordinator, if necessary, but the Response to Request for Public Records - FOIA form (CSH-479) still shall be sent within five business days advising that the ten business day extension is being taken.
- Q. The local FOIA coordinator shall review the request and determine which documents are being requested. The exact name of the document shall not be required if it can reasonably be determined by the description provided which document is being requested. Staff are not required to create a document in response to a FOIA request if one does not exist, even if the information is available to compile such a document.
- R. The local FOIA coordinator shall be responsible for obtaining the requested documents which are in the Department's possession. If the Department does not have the document requested, the local FOIA coordinator is not required to obtain it from outside the Department, including from another agency or an entity under contract with the Department, in order to comply with the request. Instead, the requestor may be referred to the appropriate agency or office, if known.
- S. The local FOIA coordinator shall carefully review the documents obtained to ensure information and documents exempt from disclosure are not provided. Only those exemptions set forth in the FOIA, which are listed on the back of the Response to Request for Public Records - FOIA form (CSH-479), shall be used. If more than one exemption applies to a particular request, all relevant exemptions shall

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be indicated on the form when responding to a FOIA request. An explanation as to what was exempted shall be stated on the form.

- T. If only a portion of a document is exempt, the exempt portion shall be deleted and the non-exempt portion of the document shall be disclosed. The local FOIA coordinator shall ensure exempt portions of a document are not legible on the copy provided.

EXEMPTIONS UNDER FOIA

General Exemptions

- U. The exemptions allowed by the FOIA are expressed in general language which must be applied to the specific document requested. It is impossible to list all exempt information or documents; therefore, local FOIA coordinators must be familiar with all exemptions listed on the back of the Response to Request for Public Records - FOIA form (CSH-479). The following are some of the exemptions which are most frequently used and examples of the items to which the exemptions may apply:

1. Clearly unwarranted invasion of privacy.

Examples - Home addresses and home telephone numbers of offenders' family members or visitors; victims' requests to receive information pursuant to PD 01.06.120 "Notification to Crime Victims" and the Department's response, unless the requestor is the victim; federal vendor identification numbers.

2. Threat to safety and security of a facility.

Examples - Blueprints or maps of facility grounds; names of informants; mobilization scenarios and critiques.

3. Information which is preliminary to a final agency decision unless it is purely factual and the public interest warrants disclosure.

Examples - Interview notes; Internal Affairs, harassment and sexual harassment investigations prior to completion. (Note: Portions or all of an investigation may be exempt after completion for other reasons, e.g., privacy or security concerns.)

4. Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys and security procedures, to the extent that the records relate to the ongoing security of the public body.

Examples - Movement plans; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices.

Specific Exemptions

- V. The FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute. Examples of items exempt under this provision are as follows:

1. Any document or information determined to be confidential by a hearing officer at a hearing conducted pursuant to Administrative Rule 791.3315.
2. All records and reports of investigations made by a probation officer, including presentence investigation reports. However, a prisoner or parolee may authorize disclosure of the presentence investigation report, and a parolee may receive a copy of the report requested pursuant to the FOIA.

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3. Any record of charges which did not result in a conviction.
4. Any information on the disposition of criminal charges and assignment as a youthful trainee.
5. Any information received through the Law Enforcement Information Network (LEIN).
6. Peer Reviews and similar quality assurance reviews conducted by the BHCS.
7. The home addresses, home telephone numbers and other information contained within the personnel files of a Department employee, unless the requestor is the employee. However, the employee's name, age (not date of birth), past and present positions with the Department and length of service in a position shall be provided to any requestor. For purposes of this exemption, personnel files include medical and expunging files maintained on an employee.
8. Information which is subject to a specific privilege (e.g., attorney-client, doctor-patient, psychologist-patient), except if the requestor is the client or patient, has a signed release from the client or patient, or is a prosecuting attorney pursuing a parole appeal and is requesting a copy of a prisoner's mental health records.
9. A report prepared and recommendations made by the Office of the Legislative Corrections Ombudsman and submitted to the Legislative Council pursuant to an investigation.
10. A record ordered to be expunged under MCL 780.623, if the Department has received notice of expungement.
11. Documents and information pertaining to an offender's registration and change of address notification pursuant to the Sex and Child Offenders Registration Act.
12. Information or records that would disclose the social security number of any individual.
13. Information or records relating to a civil court action in which the requesting party and the Department are parties. This includes civil court actions in which the Department is representing an employee being sued.

FEES

- W. Except as set forth below, all FOIA requestors shall be charged 25 cents per page for each document provided, plus the cost of postage. If a portion of a document must be blocked out and recopied prior to production, the FOIA requestor shall be charged only for the copy provided.
- X. A requestor shall not be charged for the first \$20.00 worth of documents requested within a six-month period upon submission of an affidavit verifying that s/he is receiving public assistance or sufficiently stating facts showing an inability to pay the cost due to indigence. Questions regarding whether a waiver should be allowed shall be directed to the Central Office FOIA Coordinator.
- Y. The actual cost of duplication shall be charged for copies of non-written documents, such as computer and cassette tapes, and for copies from a location where a Department photocopy machine is not available on the premises, such as at some camps and Community Residential Program (CRP) locations. Labor charges for searching, screening, travel and actual copying shall be charged at the hourly rate of the lowest-paid clerical employee (e.g., General Office Assistant E6), except as provided for in Paragraph Z.
- Z. A special charge may be assessed for the time required to search for documents for unduly burdensome or time consuming searches. Also, if it is essential that someone other than the lowest paid clerical employee retrieve the documents requested, that employee's hourly wage may be used in assessing charges. Such costs shall not be assessed without first contacting the Central Office FOIA

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Coordinator for direction on how to proceed.

- AA. Fees may be reduced or waived if providing the requested documents primarily benefits the general public. Fees shall not be waived or reduced without first contacting the Central Office FOIA Coordinator for direction on how to proceed.
- BB. In cases where a fee will be charged, the FOIA request shall be approved specifying the amount owed and indicating that the documents will be provided after payment is received in full. If the amount owed will exceed \$50.00, exclusive of any waived amounts, a 50% deposit shall be required before copy processing begins. Upon completion of processing, the balance must be paid before the documents are delivered to the requestor. A requestor who does not pay the balance owed shall not be provided with the documents requested.

INSPECTION

- CC. The FOIA also requires that a reasonable opportunity for inspection of non-exempt public documents shall be allowed upon request during normal business hours. The local FOIA coordinator must remove exempt material prior to the inspection. There is no charge for inspection of documents, although a fee may be charged if it is necessary to make a copy of a document in order to delete a portion which is exempt.

APPEAL OF DENIAL

- DD. A requestor whose request has been denied in total or in part may appeal the denial to the Director. The appeal shall be submitted in writing to the Manager of the Litigation and FOIA Division, Office of Audit, Internal Affairs and Litigation, and shall state the basis of the appeal. The Director may grant the appeal by reversing the initial response or deny the appeal by upholding the initial response. The Director's failure to respond to the requestor within ten business days of receipt of the appeal shall be deemed a denial of the appeal.

OPERATING PROCEDURES

- EE. RPAs, the FOA Deputy Director, the Administrator of the Office of Audit, Internal Affairs and Litigation and the Administrator of the BHCS shall ensure that within 60 days of its effective date, procedures necessary to implement this policy directive are developed.

AUDIT ELEMENTS

- FF. A Primary Audit Elements List has been developed and will be provided to Wardens, FOA Regional Administrators, the SAI Administrator, and the Administrators of the Office of Audit, Internal Affairs and Litigation and the BHCS to assist with self audit of this policy, pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

BM:OPH:04/26/00